

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

AMANDA J BECKLEY
Claimant

APPEAL NO. 08A-UI-02269-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOUR OAKS INC OF IOWA
Employer

OC: 01/27/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Four Oaks, Inc. of Iowa filed an appeal from a representative's decision dated February 26, 2008, reference 03, which held that no disqualification would be imposed regarding Amanda Beckley's separation from employment. After due notice was issued, a hearing was held by telephone on March 24, 2008. Ms. Beckley participated personally. The employer participated by Ginny Visser, Program Coordinator, and Karen Bruess, Vice President for Human Resources.

ISSUE:

At issue in this matter is whether Ms. Beckley was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Beckley was employed by Four Oaks, Inc. of Iowa from April 9, 2007 until February 4, 2008. She was last employed part time as a youth counselor working on-call. She was discharged primarily because of her attendance.

Ms. Beckley was absent three times in July and three times in August of 2007. With the exception of July 18, all of the absences were due to illness. She indicated the absence of July 18 was so that she could visit her aunt who was ill and near death. She decided not to visit the aunt but did not report to work. Instead, she went to a local bar. The final absence that prompted the discharge occurred on January 26, 2008. Ms. Beckley called and stated she would be absent because she was ill and vomiting. The employer believed her illness was caused by the fact that she had gone out drinking with coworkers the evening prior. She was ill for several days after January 26. The only warning Ms. Beckley received concerning her attendance was on August 16, 2007.

In making the decision to discharge, the employer also considered the fact that Ms. Beckley received a warning on September 20 because of text messages she sent to a coworker while the coworker was at work. The text messages contained profanity. Ms. Beckley received a warning on October 29 because she fell asleep at work. Neither of the actions for which she was warned was repeated after the warnings.

Ms. Beckley was not at work between January 26 and February 4. She was notified of her discharge when she returned to work on February 4, 2008.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Ms. Beckley did not have any unexcused absences after she was warned about her attendance on August 16, 2007. In fact, the only absence the employer cited for the period after August 16 was that of January 26. Although the employer believes the absence of January 26 may have been due to overdrinking the night before, it could also have been a legitimate absence unrelated to alcohol consumption. Absent evidence to the contrary, any doubt as to the nature of the illness will be resolved in Ms. Beckley's favor. Since there were no unexcused absences after Ms. Beckley was warned about her attendance, the administrative law judge concludes that excessive unexcused absenteeism has not been established.

Ms. Beckley's discharge was also due, in part, to other warnings she received during the employment. She did send inappropriate text messages to a coworker in September but stopped the practice when warned that it was against the employer's standards. She also received a warning about falling asleep at work. A warning was sufficient to stop the behavior.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. While the employer may have had good cause to discharge Ms. Beckley, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 26, 2008, reference 03, is hereby affirmed. Ms. Beckley was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css